

No. 14543

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JAMES BOYD BROWN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal From the United States District Court for the
Southern District of California, Central Division.

APPELLANT'S REPLY BRIEF.

WALTER L. GORDON, JR.,
4104 South Central Avenue,
Los Angeles 11, California,
Attorney for Appellant.

FILED

DEC 20 1954

**PAUL P. O'BRIEN,
CLERK**

TOPICAL INDEX

	PAGE
Error in failing to dismiss indictment.....	1



TABLE OF AUTHORITIES CITED

CASE	PAGE
Pon Wing Quong v. United States, 111 F. 2d 751.....	3

STATUTE

United States Code, Title 21, Sec. 174.....	2
---	---

No. 14543

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JAMES BOYD BROWN,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

On Appeal From the United States District Court for the
Southern District of California, Central Division.

APPELLANT'S REPLY BRIEF.

Error in Failing to Dismiss Indictment.

It is the contention of Appellant that the indictment failed to state a public offense and should therefore have been dismissed.

Count Two charges that defendant did, *after importation*, knowingly and unlawfully sell to Frank Stafford a certain narcotic drug, which said heroin, as the defendant then and there well knew, had been imported into the United States of America contrary to law.

Counts Three, Four and Five charge in similar language Title 21, United States Code Sec. 174 reads in part as follows:

“Whoever *fraudulently or knowingly imports* or brings any narcotic drug into the United States . . . contrary to law, or receives, conceals, buys, sells or in any manner facilitates the transportation, concealment or sale of any *such narcotic drug* after being imported or brought in, *knowing the same to have been imported contrary to law, etc.*” (Emphasized.)

This statute requires, not only that the narcotic had been illegally imported into this country contrary to law, but also stipulates a further provision that the importation must be *knowingly or fraudulently imported contrary to law*.

In the present indictment, there should be an allegation that James Boyd Brown did sell or facilitate the transportation of a narcotic which;

1. Had been *knowingly or fraudulently* imported into the United States; and,
2. That said defendant knew that said narcotic had been *knowingly and fraudulently* imported into this country *contrary to law*.

The indictment in the instant case fails to allege that the narcotic was *knowingly or fraudulently* imported contrary to law.

It might here be pointed out that the indictment charges that the defendant did, *after importation*, knowingly and unlawfully sell etc. The indictment is devoid of any allegation that the narcotic was *knowingly or fraudulently* imported. This is a necessary ingredient of the offense.

If the narcotics were not knowingly or fraudulently imported, then no offense has been committed. That is, if the narcotics were not knowingly or fraudulently imported. The mere fact that it is alleged that defendant knowingly and unlawfully sold the narcotics, knowing them to have been imported "contrary to law" is not sufficient. In other words, the narcotics could have been imported "contrary to law" and not "knowingly or fraudulently imported contrary to law." The statute refers to *such narcotic drug*, meaning one that has been knowingly and fraudulently imported.

The presumption that narcotic drugs found in the United States have been imported contrary to law is rebuttable and covers a necessary element of the crime, and hence *illegal importation* must be alleged in indictment.

Pon Wing Quong v. United States, 111 Fed. 2d 751.

With respects to the other points involved Appellant will argue the same at the time set for the oral argument.

Respectfully submitted,

WALTER L. GORDON, JR.,

Attorney for Appellant.

